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**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

OTIS WINTERS, JR.,

Plaintiff - Appellant,

v.

GEORGE GALAZA,

Defendant,

and

M. BEAR,

Defendant - Appellee.

No. 04-16479

D.C. No. CV-01-06582-AWI/DLB

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Eastern District of California  
Anthony W. Ishii, District Judge, Presiding

Submitted November 8, 2005<sup>\*\*</sup>

Before: WALLACE, LEAVY, and BERZON, Circuit Judges.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Otis Winters, Jr., formerly a California state prisoner, appeals pro se from the district court's order dismissing his 42 U.S.C. § 1983 action on statute of limitations grounds. We have jurisdiction under 28 U.S.C. § 1291. After de novo review, *see Fink v. Shedler*, 192 F.3d 911, 913-14 (9th Cir. 1999), we affirm.

The district court properly dismissed Winters's action as time-barred because his action relates to an incident that allegedly occurred on January 27, 1997, and he did not initiate this action until December 19, 2001. *See Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004) (applying California's prior one-year statute of limitations to civil rights action filed before January 1, 2003); Cal. Civ. Proc. Code § 352.1 (providing two years of tolling for the disability of imprisonment).

Defendant's motion to strike is denied as unnecessary; the documents defendant objects to were not filed with the court and were not considered by the panel.

**AFFIRMED.**